

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 31

[Docket No. PRM-31-4]

GENE-TRAK Systems; Withdrawal of Petition For Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; withdrawal.

SUMMARY: The Nuclear Regulatory Commission (NRC) is withdrawing, at the petitioner's request, a petition for rulemaking filed by GENE-TRAK System (PRM-31-4). The petition for rulemaking requested that the NRC established that 100 microcuries of phosphorus-32 used in GENE-TRAK Salmonella and Lisateria assays by a food laboratory is an exempt quantity under a general license according to 10 CFR 31.11. The petitioner is withdrawing the petition because of the introduction of new products and resulting changes in marketing strategy.

ADDRESSES: A copy of the petitioner's letter requesting withdrawal of the petition is available for public inspection or copying for a fee in the NRC Public Document Room, 2120 L Street, NW., lower level of the Gelman Building, Washington, DC 20555. A single copy of the petitioner's letter requesting the withdrawal of the petition may be obtained by writing the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Acting Chief, Rules Review Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-7758 or Toll Free: 800-368-5642.

Dated at Rockville, Maryland, this 9th day of March 1989.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 89-5823 Filed 3-13-89; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF COMMERCE

15 CFR Part 1150

[Docket No. 90248-9048]

Marking of Toy, Look-Alike and Imitation Firearms

AGENCY: Technology Administration, Commerce.

ACTION: Proposed rule.

SUMMARY: The Technology Administration of the United States Department of Commerce is today proposing rules to implement section 4 of the Federal Energy Management Improvement Act of 1988 ("Act") (Pub. L. No. 100-615) which prohibits the manufacturing, entering into commerce, shipping, transporting, or receipt of any toy, look-alike, or imitation firearm ("device") unless such device contains, or has affixed to it, a marking approved by the Secretary of Commerce. The proposed rule sets forth the method of marking established by section 4(b)(1) of the Act, an alternative method of marking when a device is not capable of being marked by the method established by section 4(b)(1), and three alternative methods of marking which may be used in all instances. In addition, the rule would waive marking requirements for any toy, look-alike, or imitation firearm that will be used only in the theatrical, movie, or television industries. Comments from the public are invited.

DATE: Comments on this proposed rule are invited and will be considered if received in writing no later than April 13, 1989.

ADDRESSES: Comments on the proposed rule should be submitted in writing to: The Under Secretary for Technology, Room 4203, Herbert Hoover Building, United States Department of Commerce, Washington, DC 20230. The public record for this rulemaking which will include all comments received is available for inspection and copying in the Department of Commerce's Central Reference and Records Inspection

Facility, 14th Street between E Street and Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Stanley I. Warshaw, Associate Director for Industry and Standards, National Institute of Standards and Technology, (301) 975-4000, FAX (301) 926-0647.

SUPPLEMENTARY INFORMATION: Section 4(a) of the Federal Energy Management Improvement Act of 1988 provides that "[i]t shall be unlawful for any person to manufacture, enter into commerce, ship, transport, or receive any toy, look-alike, or imitation firearm unless such firearm contains, or has affixed to, a marking approved by the Secretary of Commerce * * *." 15 U.S.C. 5001(a)). Section 4(b)(1) of the Act establishes as an initial acceptable marking a permanently affixed, blaze orange plug inserted in the barrel of the toy, look-alike, or imitation firearm, recessed no more than 6 millimeters from the muzzle end of the barrel, and made an integral part of the device. 15 U.S.C. 5001(b)(1). Section 4(b)(2) authorizes the Secretary to approve an alternative marking for any toy, look-alike, or imitation firearm not capable of being marked with the requisite blaze orange plug and to waive the marking requirements for any device that will be used only in the theatrical, movie, or television industries. 15 U.S.C. 5001(b)(2). Section 4(b)(3) authorizes the Secretary to adjust or change the marking system established pursuant to sections 4(b)(1) & (2), after consulting with interested persons. 15 U.S.C. 5001(b)(3).

The Technology Administration held a public workshop at the National Institute of Standards and Technology, Gaithersburg, Maryland, on February 9, 1989, on the marking requirements of the Act. (See 53 FR 50987, Dec. 19, 1988). The workshop was attended by forty representatives of trade associations, manufacturers, importers, distributors and Federal agencies. Many attendees brought samples of toy, look-alike, and imitation firearms. Although not requested, written comments were submitted in advance and subsequent to the workshop. All written comments received will be placed in the record of this rulemaking and will be available for public inspection.

Based on the comments received and consultations at the workshop and

elsewhere with trade associations, manufacturers, importers, distributors, collectors, retailers, police chiefs, and Federal agencies, this proposed rule would maintain the blaze orange plug marking established by section 4(b)(1) and establish an alternative system of marking for water guns, air-soft guns, light emitting guns or other ejecting toy, look-alike or imitation firearms which, as such, can not be marked with a plug in the muzzle end of the barrel because it would restrict the opening necessary to discharge such things as water, non-metallic projectiles, and light. In such an instance, the required marking would be a blaze orange marking permanently affixed to the exterior surface of the barrel and covering the circumference of the barrel and extending from the muzzle end for a depth of at least 6 millimeters. The proposed rule also would adjust the statutory marking system by permitting three other methods of marking for use in the alternative irrespective of whether the device could be marked with the blaze orange plug or blaze orange muzzle marking. The three alternatives would be to mark the device at manufacture by: (1) Constructing it entirely of transparent or translucent materials which permit unmistakable observation of the device's complete contents; (2) permanently coloring the entire exterior surface of the device bright red, bright orange, bright yellow, bright green, or bright blue, either singly or as the predominant color in combination with other colors in any pattern; or (3) permanently coloring the entire exterior surface of the device predominantly in white in combination with one or more of the colors bright red, bright orange, bright yellow, bright green, or bright blue in any pattern. These alternatives were selected because they represent standard industry practice for most toy, look-alike, and imitation firearms and, in the opinion of those consulted, are sufficient to identify the device as a toy, look-alike, or imitation firearm rather than as a real firearm. Finally, the proposed rule would waive marking requirements for any toy, look-alike, or imitation firearm that only will be used in the theatrical, movie, or television industries.

Section 4(c) of the Act specifically excludes from the Act's marking requirements or any marking requirements established thereunder look-alike, non-firing, collector replicas of antique firearms designed, manufactured, and produced prior to 1898, and traditional B-B, paint-ball, or pellet-firing air guns that expel a projectile through the force of air

pressure. 15 U.S.C. 5001(c). However, it is clear from the legislative history of section 4 that it was the intent of the Congress to also exclude from marking requirements traditional B-B, paint-ball, and pellet-firing air guns that expel a projectile through the force of compressed gas or mechanical spring action, or combination thereof. Accordingly, the proposed rule would exclude from marking requirements look-alike, non-firing, collector replicas of antique firearms designed, manufactured, and produced prior to 1898, and traditional B-B, paint-ball, or pellet-firing air guns that expel a projectile through the force of compressed air, compressed gas or mechanical spring action, or any combination thereof.

Additional Information:

Executive Order 12291

The Under Secretary for Technology has determined that this proposed rule is not a major rule within the meaning of section 1(b) of Executive Order 12291 because it will not result in:

- (1) An annual effect on the economy of \$100 million or more;
- (2) A major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies or geographic regions; or,
- (3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Therefore, preparation of a Regulatory Impact Analysis is not required under Executive Order 12291.

Executive Order 12612

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

Executive Order 12372

This proposed rule does not involve Federal financial assistance, direct Federal development, or the payment of any matching funds from a state or local government. Accordingly, the requirements of Executive Order 12372 are not applicable to this proposed rule.

Executive Order 12662

The Under Secretary for technology has determined that a 75-day comment period otherwise required under Executive Order 12662 would frustrate the achievement of legitimate domestic objectives within the meaning of section

(1)(b)(1) of Executive Order 12662. A 30-day comment period is being allowed.

Executive Order 12630

This proposed rule, if adopted, would not pose significant takings implications within the meaning of Executive Order 12630.

Regulatory Flexibility Act

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities because the alternative markings conform to existing industry practices for most toy, look-alike, and imitation firearms, thus reducing the rule's impact to only where such practices are not followed. Thus, As a result, a Regulatory Flexibility Analysis is not required to be prepared under the Regulatory Flexibility Act.

Paperwork Reduction Act

This proposed rule does not contain a collection of information requirement subject to the requirements of the Paperwork Reduction Act.

National Environmental Policy Act

This proposed rule, if adopted, will not significantly affect the quality of the human environment. Therefore, an environmental assessment or Environmental Impact Statement is not required to be prepared under the National Environmental Policy Act of 1969.

List of Subjects in 15 CFR Part 1150

Commerce, Business and industry, Labeling, Hobbies, Imports, Exports, Shipping, Toys, Transportation, Freight.

Date: March 7, 1989.

Ernest Ambler,

Acting Under Secretary for Technology.

For the reasons set forth in the preamble, it is proposed that Title 15, Subtitle B of the Code of Federal Regulations be amended by adding a Chapter XI, consisting of Part 1150, to read as follows:

CHAPTER XI—TECHNOLOGY ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 1150—MARKING OF TOY, LOOK-ALIKE AND IMITATION FIREARMS

Sec.	
1150.1	Applicability.
1150.2	Prohibitions.
1150.3	Approved markings.

Sec.

1150.4 Waiver.

1150.5 Preemption.

Authority: 15 U.S.C. 5001.

§ 1150.1 Applicability.

This part applies to toy, look-alike, and imitation firearms ("devices") having the general appearance, shape, and/or configuration of a firearm and produced or manufactured and entered into commerce on or after May 5, 1989 other than look-alike, non-firing, collector replicas of antique firearms modelled on a firearm designed, manufactured, and produced prior to 1898, and traditional B-B, paint-ball, or pellet-firing air guns that expel a projectile through the force of compressed air, compressed gas or mechanical spring action, or any combination thereof, as described in ASTM Standard F 589-85.

§ 1150.2 Prohibitions.

No person shall manufacture, enter into commerce, ship, transport, or receive any toy, look-alike, or imitation firearm ("device") covered by this part as set forth in § 1150.1 unless such device contains, or has affixed to it, one of the markings set forth in § 1150.3, or unless this prohibition has been waived by § 1150.4.

§ 1150.3 Approved markings.

The following markings are approved by the Secretary of Commerce:

(a) A blaze orange (*Federal Standard 595-A, Jan. 1984, color no. 12199*) solid plug permanently affixed to the muzzle end of the barrel as an integral part of the entire device and recessed no more than 6 millimeters from the muzzle end of the barrel.

(b) For any water gun, air-soft gun, light-emitting gun or other ejecting toy, look-alike, or imitation firearm having a opening in the muzzle end of the barrel to discharge such things as water, non-metallic projectiles, and light, a blaze orange (*Federal Standard 595-A, Jan. 1984, color no. 12199*) marking permanently affixed to the exterior surface of the barrel, covering the circumference of the barrel from the muzzle end for a depth of at least 6 millimeters.

(c) Construction of the device entirely of transparent or translucent materials which permit unmistakable observation of the device's complete contents.

(d) Coloration of the entire exterior surface of the device in bright red, bright orange, bright yellow, bright green, or bright blue, either singly or as the predominant color in combination with other colors in any pattern.

(e) Coloration of the entire exterior surface of the device predominantly in

white in combination with one or more of the colors bright red, bright orange, bright yellow, bright green, or bright blue in any pattern.

§ 1150.4 Waiver.

The prohibitions set forth in § 1150.2 are waived for any device that only will be used in the theatrical, movie, or television industries.

§ 1150.5 Preemption.

In accordance with section 4(g) of the Federal Energy Management Improvement Act of 1988 (15 U.S.C. 5001(g)), the provisions of that Act and of this part supersede any provisions of State or local laws or ordinances which provide for markings or identification inconsistent with the provisions of section 4 of that Act or of this part.

[FR Doc. 89-5675 Filed 3-13-89; 8:45 am]

BILLING CODE 3510-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-26598; File No. S7-8-89]

Reporting of Beneficial Ownership in Publicly-Held Companies

AGENCY: Securities and Exchange Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Securities and Exchange Commission ("Commission") today is publishing for comment proposals to amend the rules relating to the reporting of beneficial ownership in publicly-held companies. The proposals are intended to improve the effectiveness of the beneficial ownership disclosure scheme, while at the same time reducing the reporting obligations of passive investors.

DATE: Comments should be received on or before May 15, 1989.

ADDRESS: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comment letters should refer to File No. S7-8-89. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: David A. Sirignano or Richard E. Baltz at (202) 272-3097, Office of Tender Offers, Division of Corporation Finance.

SUPPLEMENTARY INFORMATION: The Commission is proposing for comment

amendments to Rules 13d-1,¹ 13d-2,² and 13d-7,³ and Schedules 13D⁴ and 13G.⁵

I. Executive Summary

The beneficial ownership reporting requirements embodied in sections 13(d)⁶ and 13(g)⁷ of the Securities Exchange Act of 1934 ("Exchange Act")⁸ and the regulations adopted thereunder⁹ are intended to provide to investors and to the subject issuer information about accumulations of securities that may have the ability to change or influence control of the issuer. The statutory and regulatory framework also establishes a comprehensive reporting system for gathering and disseminating information about the ownership of equity securities.

These provisions require, subject to exceptions, that any person who acquires more than five percent of a class of equity securities registered under section 12 of the Exchange Act¹⁰ and other specified equity securities (collectively, "subject securities")¹¹ report such acquisition on Schedule 13D within 10 days. Persons holding more than five percent of a class of subject securities at the end of the calendar year, but not required to report on Schedule 13D, must file a short-form Schedule 13G within 45 days after December 31. These Schedule 13G filers include persons exempt from the

¹ 17 CFR 240.13d-1.

² 17 CFR 240.13d-2.

³ 17 CFR 240.13d-7.

⁴ 17 CFR 240.13d-101.

⁵ 17 CFR 240.13d-102.

⁶ 15 U.S.C. 78m(d).

⁷ 15 U.S.C. 78m(g).

⁸ 15 U.S.C. 78a et seq.

⁹ Regulation 13D-G, Rule 13d-1 et seq. [17 CFR 240.13d-1 et seq.]

¹⁰ 15 U.S.C. 78l.

¹¹ Acquisitions of equity securities that would have been registered under Section 12 except for the insurance company exemption in section 12(g)(2)(G) [15 U.S.C. 78l(g)(2)(G)], or that are issued by a closed-end investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a-1 to 80a-52], also are subject to the beneficial ownership reporting requirements. In addition, if a person has the right to acquire beneficial ownership of a subject security within 60 days (A) through the exercise of any warrant, option, or right, (B) through the conversion of a security, (C) pursuant to the power to revoke a trust, discretionary account or similar arrangement, or (D) pursuant to the automatic termination of a trust, discretionary account, or similar arrangement, such person shall be deemed to be the beneficial owner of the subject securities which may be acquired through the exercise or conversion of such security or power. If a security or power specified by (A), (B), (C), or (D) is acquired with the purpose or effect of changing or influencing control or as a participant in a transaction having such a purpose or effect, the person is deemed a beneficial owner of the subject security immediately upon acquisition. Rule 13d-3(d)(1)(i) [17 CFR 240.13d-3(d)(1)(i)].

requirement of Section 13(d)¹² as well as specified institutional investors holding securities in the ordinary course of business and not with a control purpose.¹³

Based upon its experience in administering the beneficial ownership rules, the Commission is proposing changes to improve the meaningfulness to investors of filings on Schedule 13D, while at the same time reducing the reporting obligations of passive non-institutional investors, who would become entitled to use the short-form Schedule 13G instead of the Schedule 13D.¹⁴ The Commission preliminarily believes that Schedule 13G provides adequate information when the filing person has a passive investment purpose—that is, when the acquisition is not for the purpose, and does not have the effect, of changing or influencing the control of the issuer, and the person is not participating in a transaction having such a purpose or effect.

The proposed amendments would alter the present beneficial ownership reporting scheme in a number of ways. In addition to the two current categories of Schedule 13G filers (institutional investors and persons reporting exempt acquisitions), a third category (passive non-institutional investors) would be created, significantly expanding the classes of persons eligible to file on the short-form. An institutional investor

would continue to be able to file a short-form report on Schedule 13G 45 days after the year's end, provided that the requirements of current Rule 13d-1(b)(1) are satisfied and the institutional investor's beneficial ownership does not equal or exceed 20 percent of the class at any time. Any other person who acquires or holds, with a passive investment purpose, more than five percent (but not 20 percent or more) of a class of subject securities also would be permitted to file a short-form report on Schedule 13G, rather than the long-form report on Schedule 13D currently required for most investors, within 10 days after the acquisition. Exempt acquisitions also would be reported on Schedule 13G within a 10-day period but would not be subject to the 20 percent or more limitation.

Both institutional and non-institutional Schedule 13G filers that determined that they could no longer make the passive investment purpose certification would be required to file a Schedule 13D within 10 days of a change in purpose. A non-exempt acquisition causing any person, including an institutional investor, to own beneficially 20 percent or more of a class of subject securities also would disqualify that person from filing on Schedule 13G and trigger a requirement for a Schedule 13D filing within 10 days. An investor required to file a Schedule 13D because it either had changed its investment purpose or acquired 20 percent or more of a class of subject securities would be subject to a waiting period ("cooling-off period") during which such person could not vote or direct the voting of the subject securities, or acquire an additional beneficial ownership interest in any securities either of the issuer or of any person controlling the issuer. An investor required to file a Schedule 13D because it acquired 20 percent or more of a class of subject securities would be subject to a cooling-off period only until the filing of a Schedule 13D. However, an investor that must file a Schedule 13D because of a change in investment purpose would be subject to a cooling-off period from the time of the change in investment intent until the expiration of the tenth day from the date of the filing of a Schedule 13D. The current cooling-off period applicable only to institutional investors¹⁵ would not be retained.

As is required currently, amendments to disclose any other changes in the information reported on Schedule 13G would be required only on an annual

basis,¹⁶ so long as beneficial ownership does not exceed 10 percent of the class of subject securities, calculated at the end of the month when that ownership level is reached.¹⁷

A chart summarizing the current reporting obligations and the effects of the proposed rule amendments appears below in Part III.F.

Finally, the Commission is proposing technical amendments to the beneficial ownership rules. First, the proposed amendments would require that a copy of a Schedule 13D or 13G, or amendments thereto, filed with respect to holdings of a class of securities quoted on the National Association of Securities Dealers Automated Quotation System ("NASDAQ") be provided to the National Association of Securities Dealers, Inc. ("NASD") to parallel the requirements for exchange-traded securities. Second, proposed amendments to Rule 13d-1(c) would delete as no longer necessary the grandfather provisions adopted in 1978. Additional related and clarifying amendments also are proposed.

II. Background

As part of the Williams Act Amendments of 1968,¹⁸ Congress added section 13(d) to the Exchange Act to require any person (or group of persons) who, as a result of an acquisition, becomes the beneficial owner of more than five percent of a class of equity securities registered under section 12 of the Exchange Act or other subject securities¹⁹ to send to the issuer of the security and to each exchange on which the security is traded and to file with the Commission a report disclosing the acquisition and other information about the acquirer and its plans or proposals within 10 days after the acquisition. Section 13(d) was intended to provide information to the public and the subject company about accumulations of its equity securities in the hands of persons who then would have the potential to change or influence control of the issuer.²⁰

Certain types of acquisitions unrelated to a potential change or influence of control are exempt from

¹² This category consists of persons filing on Schedule 13G because their acquisitions are statutorily or administratively exempt (collectively, "exempt acquisitions") from reporting on Schedule 13D. See Part II for a summary of the exempt acquisitions.

¹³ Such persons include a broker or dealer registered under section 15(b) of the Exchange Act [15 U.S.C. 78o(b)], a bank as defined in section 3(a)(6) of the Exchange Act [15 U.S.C. 78c(a)(6)], an insurance company as defined in Section 3(a)(9) of the Exchange Act [15 U.S.C. 78c(a)(9)], an investment company registered under Section 8 of the Investment Company Act of 1940 [15 U.S.C. 80a-8], an investment adviser registered under section 203 of the Investment Advisers Act of 1940 [15 U.S.C. 80b-1 *et seq.*], an employee benefit plan or pension fund that is subject to the provisions of Employee Retirement Income Security Act [codified principally in 29 U.S.C. 1001-1461], and related holding companies and groups (collectively, "institutional investors"). Rule 13d-1(b)(1)(ii) [17 CFR 240.13d-1(b)(ii)].

¹⁴ The Commission also has recommended to Congress that the period for filing an initial beneficial ownership report be reduced from ten days to five business days and that the filing person be prohibited from acquiring additional securities until the filing is made with the Commission. In addition, the Commission has endorsed the imposition of civil penalties for violations of section 13(d). See Statement of David S. Ruder, Chairman of the Securities and Exchange Commission, Before the House Subcommittee on Telecommunications and Finance, September 17, 1987, and Statement of Charles C. Cox, Acting Chairman of the Securities and Exchange Commission, Before the Senate Committee on Banking, Housing and Urban Affairs, June 23, 1987.

¹⁵ Rule 13d-1(b)(3)(ii) [17 CFR 240.13d-1(b)(3)(ii)].

¹⁶ Rule 13d-2(b) [17 CFR 240.13d-2(b)].

¹⁷ Rule 13d-1(b)(2) [17 CFR 240.13d-1(b)(2)]. Under the proposal, this provision would apply to both institutional and non-institutional investors, but not to persons reporting exempt acquisitions.

¹⁸ Pub. L. 90-439, 82 Stat. 454, 15 U.S.C. 78m(d), 78m(e), 78n(d), 78n(e) and 78n(f).

¹⁹ See n. 11 *supra*.

²⁰ S. Rep. No. 550, 90th Cong., 1st Sess. 7 (1967); H.R. Rep. No. 1711, 90th Cong., 2nd Sess. 8 (1968); and Hearings on S. 510 before the Subcomm. on Securities of the Senate Comm. on Banking and Currency, 90th Cong., 1st Sess. (1967).

reporting by statute, regulation and Commission interpretation. Thus, persons who acquire not more than two percent of a class of subject securities within a 12-month period are exempted by Section 13(d)(6)(B).²¹ Section 13(d)(6)(C)²² exempts from reporting acquisitions by the issuer of its own securities. Section 13(d)(6)(A)²³ exempts from reporting acquisitions of subject securities acquired in a stock-for-stock exchange which is registered under the Securities Act of 1933,²⁴ because Congress believed at that time that shareholders of the issuer would, through the receipt of a prospectus, receive all material information necessary to make an informed decision whether to hold stock or exchange it for the stock of the company making the exchange offer.²⁵ Section 13(d)(6)(D)²⁶ empowers the Commission to exempt other acquisitions or proposed acquisitions not entered into with a purpose or effect of changing or influencing control of the issuer. The Commission has used this authority to permit institutional investors acquiring securities in the ordinary course of business to file a short-form Schedule 13G.²⁷

The beneficial ownership reporting provisions apply only to acquisitions of voting securities.²⁸ Because of the reduction in the reporting threshold, persons who acquire more than five percent, but less than 10 percent, or a subject security before January 1, 1970, also are not required to file a Schedule 13D.²⁹ In addition, the Commission has expressed the view that section 13(d) does not apply to acquisitions occurring before the securities are registered pursuant to section 12 of the Exchange Act.³⁰

²¹ 15 U.S.C. 78m(d)(6)(B).

²² 15 U.S.C. 78m(d)(6)(C).

²³ 15 U.S.C. 78m(d)(6)(A).

²⁴ 15 U.S.C. 77a et seq.

²⁵ S. Rep. No. 550 at 3; H.R. Rep. No. 1711 at 3.

²⁶ 15 U.S.C. 78m(d)(6)(D).

²⁷ Release No. 34-14692 (April 28, 1978) [43 FR 18484].

²⁸ Rule 13d-1(d) [17 CFR 240.13d-1(d)].

²⁹ As originally enacted, the Williams Act required reporting by any person or group acquiring more than 10 percent of an equity security. The threshold was reduced to more than five percent in 1970. See Pub. L. No. 91-507, §§ 1, 2, 84 Stat. 1497.

³⁰ Release No. 34-15348 (November 29, 1978) [43 FR 55751, 55742]. Securities acquired before the effective date of the registration statement, however, are included in the calculation of the 2 percent exemption under section 13(d)(6)(B).

In addition, the staff has expressed the view that holdings by non-control persons of more than five percent resulting from a decrease in the outstanding number of shares also are not reportable. Because the person has not taken any action to increase its beneficial ownership, no acquisition has occurred for the purposes of Rule 13d-1(a). Acquisitions of

The exemptions created gaps in the beneficial ownership reporting scheme permitting persons to own more than five percent of a class of subject securities without reporting such ownership. In 1977, Congress enacted section 13(g) of the Exchange Act³¹ to provide for a comprehensive system of disclosure of ownership interests.³² Section 13(g) requires any person who is directly or indirectly the beneficial owner or more than five percent of a class of subject securities at the end of the calendar year, except for the issuer of the securities, to send to the issuer and file with the Commission a statement of Schedule 13G. Section 13(g) was intended to improve disclosure to issuers and the marketplace and to "supplement [section 13(d)] by providing legislative authority for certain additional disclosure requirements that in some cases could not be imposed administratively."³³ On the face, section 13(g) would require a filing regardless of whether a person was required to report ownership under other sections of the Exchange Act; however, the Commission was directed "to take such steps as are necessary and appropriate in the public interest to achieve centralized reporting of the information, to avoid unnecessary duplicative reporting, and to minimize the compliance burden on persons required to report."³⁴

Pursuant to its rulemaking authority under sections 13(d) and 13(g), the Commission adopted a comprehensive system of beneficial ownership reporting. Unless otherwise exempt, all persons acquiring more than five percent of a class of voting subject securities must file a Schedule 13D with the Commission within 10 days of the acquisition disclosing in detail information concerning the purchaser, the purpose of the acquisition and any plans or proposals of the purchaser for the issuer.³⁵ The Schedule 13D must be

additional securities are subject to the exemption in section 13(d)(6)(B). See *Harold Martin* (available October 4, 1979).

³¹ 15 U.S.C. 78m(g).

³² In addition, as part of the Securities Act Amendments of 1975, Congress enacted section 13(f) of the Exchange Act [15 U.S.C. 78m(f)] to create in the Commission a central depository of historical and current data about the investment activities of institutional investment managers and to facilitate consideration of the influence and impact of institutional investment managers on securities markets and the public policy implications of that influence. An institutional investor is subject to section 13(f) only if it exercises investment discretion with respect to securities having an aggregate fair market value of \$100 million or more.

³³ S. Rep. No. 114, 95th Cong. 1st Sess. 13 (1977).

³⁴ *Id.*

³⁵ Rule 13d-1(a) [17 CFR 240.13d-1(a)].

amended promptly to disclose any material changes in the information reported.³⁶

Pursuant to section 13(g), the Commission adopted a short-term beneficial ownership report. This report must be filed by holders of more than five percent of a class of equity securities who are exempt from filing a Schedule 13D.³⁷ Schedule 13G requires disclosure of such person's identity, residence, citizenship, and the number and description of the shares in which such person has an interest, including the nature of such interest. The Schedule 13G must be filed within 45 days after the close of the calendar year and amended on an annual basis if the percentage of the class of subject securities beneficially owned as of December 31 remains more than five percent.³⁸

In addition to persons reporting exempt acquisitions, institutional investors that can represent that the securities were acquired in the ordinary course of business and not with the purpose or effect of changing or influencing control of the issuer also may file a Schedule 13G rather than a Schedule 13D.³⁹ An institutional investor is permitted to amend on an annual basis, unless its beneficial ownership exceeds 10 percent of the outstanding securities, in which case an amendment must be filed within 10 days after the close of the first month in which the interest exceeds 10 percent, and thereafter within 10 days after the end of the month if a five percent change occurs, computed as of the last day of the month.⁴⁰ If such an institutional investor can no longer make the passive investment representation, it must file a Schedule 13D within 10 days and refrain from voting its securities or acquiring

³⁶ Rule 13d-2(a) [17 CFR 240.13d-2(a)].

The term "promptly" is not defined in Regulation 13D-G. In *In re Cooper Laboratories, Inc.*, Release 34-22171 (June 26, 1985) (Administrative Proceeding File No. 3-8536), the Commission expressed the view that "the promptness of an amendment to a Schedule 13D must be judged in light of all the facts and circumstances of a particular situation and [any] delay beyond the time of the amendment reasonably could have been filed may not be deemed to be prompt under the circumstances presented." The Commission determined that the amendment in that case should have been filed on the day following the change requiring an amendment. The respondent was required to comply with an undertaking to maintain in trust the profits received from the sale of the subject security to satisfy any claims by investors who sold prior to the filing of the amendment.

³⁷ See discussion *supra*, in text at nn. 21-30.

³⁸ Rule 13d-1(c) [17 CFR 240.13d-1(c)].

³⁹ See n. 13 *supra*. Rule 13d-1(b)(1) [17 CFR 240.13d-1(b)(1)].

⁴⁰ Rules 13d-2(b) [17 CFR 240.13d-2(b)] and 13d-1(b)(2) [17 CFR 240.13d-1(b)(2)].

additional securities of the same class for 10 days following the filing of the Schedule 13D.⁴¹

III. Discussion of Proposals

The beneficial ownership reporting scheme is intended to inform the marketplace of acquisitions of a company's securities that could affect control. Under the legislative framework, both the occurrence of the acquisition and the purpose for which the acquirer is accumulating securities are deemed material disclosures. However, the current scheme requires most persons to file detailed disclosure reports regardless of investment purpose. As a result, the scheme may place an unnecessary reporting obligation on persons whose acquisitions do not involve the concerns of the Williams Act.

The Commission is proposing amendments to Regulations 13D-G to make beneficial ownership disclosure more useful to investors, the marketplace and the Commission and to reduce significantly the requirements that the current reporting scheme imposes on persons with a passive investment purpose. These changes would enhance the comprehensive framework of disclosure contemplated by Congress. Since all non-institutional investors with a passive investment purpose could be the short-form Schedule 13G within 10 days of the triggering event, the mere filing of a Schedule 13D would serve to notify the marketplace of an acquisition by a person with a possible control intent. The reduced number of Schedule 13D filings would allow the marketplace, as well as the staff of the Commission, to focus more quickly on acquisitions involving a potential change in control.⁴²

A. Expanding the Class of Persons Using Schedule 13G

The purposes underlying section 13(d) do not require the extensive disclosure currently elicited by Schedule 13D for investors whose acquisitions have a passive investment purpose. However, the vast majority of persons filing on Schedule 13D have such a passive intent, but are not eligible to use the abbreviated disclosure document, Schedule 13G. Data provided by the Commission's Office of Economic Analysis indicate that 74 percent of the Schedule 13D studied reported no

intention to change control of the issuer at the time of the initial filing.⁴³ Further, only 10 percent of these persons amended their original intent disclosure from "investment" to "change in control" over a two-year period following the date of the original filing.

The Commission is proposing that this significant pool of investors having solely a passive investment purpose with respect to their ownership of more than five percent of a class of subject securities be permitted to file on Schedule 13G instead of Schedule 13D. Under the proposed amendments, Rules 13d-1(a) and 13d-2(a) would continue to require that persons who acquire beneficial ownership of more than five percent of the securities of the issuer file a Schedule 13D within 10 days after crossing the threshold and thereafter promptly amend that statement to disclose changes in ownership levels. Rule 13d-1(b)(1) would continue to permit an institutional investor acquiring subject securities in the ordinary course of its business to file a Schedule 13G within 45 days after the calendar year's end, provided that the conditions of the rule are satisfied. Proposed Rule 13d-(b)(2) also would permit any other investor, institutional or non-institutional, that acquires or holds more than five percent of a class of subject securities with a passive investment purpose to use a Schedule 13G in lieu of a Schedule 13D.⁴⁴

⁴³ The results of this sample of 100 Schedules 13D filed in calendar year 1985 were comparable to those derived from an earlier study of 200 filings of Schedule 13D from fiscal year 1981.

⁴⁴ Individuals controlling eligible institutions are the indirect beneficial owners of securities held by the institutions and thus have an obligation under section 13(d) and Rule 13d-1 to report those holdings. See *in re The Cobelli Group, Inc.*, Release No. 34-29005 (August 17, 1988). The staff has permitted individuals to file Schedules 13G jointly under Rule 13d-1(f) with an institution within their control where the individual owns directly, or indirectly through an ineligible entity, less than one percent of the company's stock and does not intend to change or influence control of the company. See *Warren E. Buffett and Berkshire Hathaway, Inc.* (available December 5, 1986). To meet this obligation, the individual signs a separate Schedule 13G cover sheet and signs the Schedule in his individual capacity. See Schedule 13G, Instruction (1) and Notes for Cover Page and Item 10; 17 CFR 240.13d-102.

While the proposed amendments would remove any obstacle to the individual reporting beneficial ownership on a Schedule 13G with respect to passive investments, because of the timing difference in the filing of the Schedule by individuals and eligible institutions, the staff will continue its no-action position to allow the control person to report indirect beneficial ownership through the controlled entity 45 days after the end of the calendar year, rather than 10 days after the person's indirect beneficial ownership exceeds five percent.

A person with a passive investment purpose filing on Schedule 13G would have to disclose general information about its identity, residence and citizenship, and a description of the nature of the interest in the subject securities. Unlike the Schedule 13D, the Schedule 13G does not require disclosure of the source and amount of funds used or to be used for the acquisition; the purpose for which the acquisition was made; all transactions in the subject securities for the past 60 day; or contracts or arrangements with respect to the subject securities. With the extension of Schedule 13G to non-professional investors, the passive investment purpose certification would be revised to make the "ordinary course of business" requirement inapplicable to such persons.

Persons that cannot certify solely a passive investment purpose because of the current possibility that they may seek to exercise or influence control as an alternative investment purpose would be required to file on a Schedule 13D and would not be eligible to use a Schedule 13G. In essence, the proposed reporting system would divide persons with beneficial ownership of more than five and less than 20 percent of subject securities into two groups—those persons with a passive investment purpose permitted to file on Schedule 13G, and all other persons required to file on Schedule 13D.⁴⁵

The current requirement that an institutional investor must certify that the subject securities were acquired in the ordinary course of business, as well as with a passive investment purpose, would be retained. The Commission requests comment, however, on whether the current form of the certification, requiring that the securities be acquired in the ordinary course of business,⁴⁶ as a prerequisite to filing 45 days after the calendar year's end, should be retained, if the institutional investor acquires the subject securities with a passive investment purpose. The proposed amendments would eliminate the requirement that an institutional investor that ceases to satisfy the conditions of current Rule 13d-1(b)(1)(ii) file a Schedule 13D. Like any person with a passive investment purpose, such a person would be permitted to file an initial or amended Schedule 13G within 10 days.

⁴⁵ The only exception would be Schedules 13G filed with respect to exempt acquisitions pursuant to current Rule 13d-1(c) (proposed to be retained with some modifications as discussed below). Such schedules would not include a certification of the filer's passive investment purpose.

⁴⁶ Item 10, Schedule 13G.

⁴¹ Rule 13d-1(b)(3)(i), (ii) [17 CFR 240.13d-1(b)(3)(i), (ii)].

⁴² In fiscal year 1988, 2,850 original Schedules 13D and 6,927 amendments were filed with the Commission.

The Commission requests public comment on whether the use of Schedule 13G for passive investors should be mandatory, rather than voluntary as in the current rule proposal. Specifically, comment is solicited on whether the purposes of the proposed rules adequately would separate persons with a passive investment purpose from those with a possible control intent or whether a sufficient number of persons with a passive intent would choose to forego the lesser burdens of a Schedule 13G filing and file a Schedule 13D. Passive investors may choose to file on Schedule 13D because of the cooling-off period that accompanies the use of Schedule 13G. Use of Schedule 13D by passive investors could undermine the effectiveness of the schedules as a means to delineate between filers with a passive investment purpose and those with the intent to change or influence control. Comment also is requested on whether the currently permissive filing of Schedules 13G under Rule 13d-1(b)(1) by institutional investors acquiring or holding subject securities in the ordinary course of business should be made mandatory.

B. Ten Day Initial Filing Obligation for Non-institutional Beneficial Owners of More Than Five Percent; Timing for Amendments

Under the current reporting system, a Schedule 13D must be filed within 10 days after acquiring more than five percent of a subject security. In contrast, a Schedule 13G need not be filed until 45 days after the end of the calendar year in which the filing obligation arose, if beneficial ownership is more than five percent at the year's end. Except for an institutional investor acquiring the subject securities in the ordinary course of its business, the proposed amendments would require that any person filing a Schedule 13G, including a filing reflecting an exempt acquisition, file within 10 days of the triggering event.⁴⁷ Thus, the market and shareholders would receive more timely notice of the creation and existence of voting blocks that have the potential of affecting control of the issuer. Obtaining the short-form information more promptly is important even when the investment purpose is passive, because the existence of a large block of securities has control implications, regardless of the intentions of the current holder of the block.

As is currently required for an institutional investor, a non-institutional

investor would file a Schedule 13G or amendment thereto within 10 days after the end of the first month in which such person's direct or indirect beneficial ownership exceed 10 percent of the class of subject securities, and thereafter within 10 days after the end of the month in which such person's beneficial ownership increases or decreases by more than five percent since the previous filing. Amendments to disclose any other changes would continue to be required only on an annual basis.

Institutional investors acquiring subject securities in the ordinary course of business would continue to file the Schedule 13G 45 days after the end of the calendar year to report holdings of more than five percent as of December 31. This distinction has been maintained due to the substantial number of positions reported by institutional investors on Schedule 13G.⁴⁸ Changes in the beneficial ownership reporting requirements for institutional investors could impose a substantial financial and operational burden.

Although the Commission does not propose to accelerate the filing date of the Schedule 13G for institutional investors, the experience of recent years has made clear that control is affected not only by a beneficial owner's own intentions of directly affecting control of an issuer, but also the use to which the acquirer may lend its voting power, or the intent of a person to whom it may sell the block. The concentration of voting power in a single block and its transferability are material information to the market. Furthermore, recent enforcement actions have provided examples of the use of illegal parking of securities involving market professionals to avoid, among other legal requirements, Schedule 13D disclosures and obligations under the Hart-Scott-Rodino Act.⁴⁹

To obtain disclosure about institutional holdings that could play a role in a control contest, the Commission could require that institutional investors file Schedule 13G on a 10-day, monthly or quarterly basis, and/or require the reporting of all five percent positions, not just those in existence at the end of the relevant

period. The Commission requests specific comment on the effect requiring institutional investors to file on a more timely basis would have on block positioning and marketmaking for a particular security. The Commission is concerned about the potential disruptive effect of an accelerated reporting obligation on the legitimate, day-to-day business operations of institutional investors—particularly with respect to market makers—as well as their ability, on a cost-effective basis, to comply with increased reporting requirements. Data are requested on the frequency with which broker-dealers or other market professionals hold more than five percent positions that are not required to be reported at the calendar year's end. The Commission also requests information as to the nature of additional procedures that would be necessary to monitor for these positions and the associated costs of such procedures.

C. Filing of Schedule 13D and Cooling-Off Period for Changes in Investment Intent

Under the current rules, institutional investors who have filed a Schedule 13G but who can no longer make ordinary course of business and passive investment representations must file a Schedule 13D "promptly," but no later than 10 days after a change in their investment purpose.⁵⁰ After filing the Schedule 13D, the institutional investor is prohibited from acquiring additional securities of the subject class or of a person controlling the issuer of the class, or voting the securities already owned for a period of 10 days.⁵¹

The proposed rule would extend the concept of a cooling-off period to any passive investor filing on Schedule 13G (except for those with only exempt acquisitions) that determines that it no longer holds the subject securities with a passive investment purpose. As proposed, the cooling-off period for a change in investment purpose would begin to run from the time of the determination of the change in investment intent until the expiration of the tenth day from the date of the filing of a Schedule 13D. A Schedule 13D would be required no later than 10 days after a change in investment purpose. The proposed rule would delete the reference to "promptly"⁵² and require

⁴⁶ Approximately 3,700 initial Schedules 13G and 5,990 amendments were filed in fiscal year 1987. Data from Schedules 13G with a reporting date of December 31, 1987 indicate that at least half of the filings were made by a broker or dealer, bank, insurance company, investment company, investment adviser or employee benefit plan.

⁴⁷ 15 U.S.C. 18a.

⁴⁸ See e.g., *SEC v. First City Financial*, 688 F. Supp. 705 (D.D.C. 1988); *SEC v. Boyd L. Jefferies, et al.*, Lit. Rel. No. 11370 (March 19, 1987).

⁵⁰ Rule 13d-1(b)(3)(i) [17 CFR 240.13d-1(b)(3)(i)].

⁵¹ Rule 13d-1(b)(3)(ii) [17 CFR 240.13d-1(b)(3)(ii)].

⁵² The deletion of the word "promptly" from current Rule 13d-3 [17 CFR 240.13d-3] should eliminate any possible misperception that "promptly," in the context of a Regulation 13D-G filing, would be satisfied by a 10-day filing. See n. 36, *supra*.

⁴⁷ Proposed Rules 13d-1 (b)(2) and (c).

the filing of a Schedule 13D within 10 days to parallel the original Schedule 13D filing obligation.

The proposed cooling-off period is necessary and appropriate when the beneficial owner determines that it no longer holds the securities with a passive investment purpose and may seek to influence control. The proposed approach would encourage the prompt filing of a Schedule 13D and prevent further acquisitions or the voting of the subject securities until the market and investors have been given time to react to the information in the Schedule 13D filing. The extension of a cooling-off period until ten days from the date of the required filing on Schedule 13D also would serve as a deterrent to the improper use of the Schedule 13G by persons seeking to influence control.

Comment is requested on whether the ten day period is necessary at all, or whether the period should be changed to a shorter period, such as three or five business days, or a longer period, such as fifteen days. Further, the Commission requests comment on whether such a provision would adequately discourage the improper use of a Schedule 13G by persons that may seek to influence control.

D. Limit on Ownership Interest Reportable on Schedule 13G and Cooling-off Period

Proposed Rule 13d-1(b)(1) would include a provision restricting the use of Schedule 13G (except for exempt acquisitions) by limiting the aggregate amount of securities that could be reported on that Schedule. The Commission is proposing to use a 20 percent threshold to balance the increased reporting burden and the need to provide detailed information about acquisitions that have significant control implications because of the size of the holdings.⁵³ As with the case of a change in passive investment purpose, acquisitions causing a person beneficially to own 20 percent or more of the class would require the holder to file a Schedule 13D within 10 days after the acquisition and subject the filer to a cooling-off period. Unlike the

comparable cooling-off period for changes in investment intent, the cooling-off period only would run from the time the threshold is reached until the filing of the Schedule 13D.

The Commission requests comment on whether a 20 percent threshold level of stock ownership is the appropriate threshold at which to require persons with a purported passive investment purpose to report on Schedule 13D. At some level, a block of securities has inherent control implications because of its size and its potential for movement. The market and investors should receive notice of the block's existence and the information elicited by Schedule 13D, as well as prompt amendment to that information, including changes in the block's size. Commentators should address whether a 10 percent threshold, paralleling current requirements for amendment of a Schedule 13G and the 10 percent threshold for reporting under section 16,⁵⁴ is more appropriate, or whether a higher threshold should be adopted. Finally, the Commission requests comment on the appropriateness and length of the 10 day filing and cooling-off periods in this context. As discussed in Part III.C. above, the Commission also requests comment on when the cooling-off period should begin to run.

E. Related and Clarifying Amendments

The Commission also is proposing related amendments to the beneficial ownership reporting requirements. Amendments are proposed to current Rules 13d-1(b), 13d-2, 13d-7 and Schedules 13D and 13G.⁵⁵

Current Regulation 13D-G requires the sending of the Schedule 13D and amendments to each exchange on which the security is traded. Schedules 13G and amendments, on the other hand, are only required to be sent to the principal exchange on which the securities is traded, if any. Since Schedule 13G would become the primary reporting document in many cases, the Commission proposes to require that a copy of each Schedule 13G and amendment be provided to each exchange on which the security is

traded. Schedules 13G for exempt acquisitions, however, would continue to be sent only to the issuer at its principal executive offices and filed with the Commission, as provided by current Rule 13d-1(c). Amendments to Schedules 13G relating to exempt acquisitions would be treated similarly and no longer be required to be sent to an exchange, as is currently required by Rule 13d-2(b).

As a related matter, the Commission also proposes to require that a copy of a Schedule 13D, Schedule 13G or amendment filed to report ownership of a class of securities quoted on NASDAQ (except for those reflecting exempt acquisitions), and any amendments, be provided to the NASD.

Proposed amendments to Rule 13d-1(c) would delete as no longer necessary the grandfather provisions adopted in 1978 to facilitate the transition to reporting on Schedule 13G for persons whose holdings previously were not subject to any disclosure requirements. Persons with exempt acquisitions would continue to report beneficial ownership on Schedule 13G pursuant to revised Rule 13d-1(c).

The Commission also is proposing technical and clarifying amendments to Regulation 13D-G. Amendments to Rules 13d-1 and 13d-2 would make clear that a total of six copies (one signed original plus five copies) must be filed with the Commission under the current rules. Rule 13d-7 also would be revised to clarify that a Schedule 13D filed with respect to holdings reported until then on Schedule 13G, and vice versa, do not require an additional fee, if beneficial ownership had not fallen below five percent. In accordance with current staff interpretations, when a reporting person ceases to be eligible for Schedule 13G and must file a Schedule 13D, no new fee will be imposed. Similarly, if a 13D filer subsequently meets the criteria for use of Schedule 13G, no new fee will be imposed.

Technical amendments also are proposed to Schedules 13D and 13G to conform the schedules to the revised rules and amend the filing deadlines and the number of copies in the instructions.

⁵³ The amended rule is not intended to create a presumption that a person beneficially owning 20

percent or more of a class of subject securities has control or an actual control purpose.

⁵⁴ 15 U.S.C. 78p.

⁵⁵ 17 CFR 240.13d-1(b), 13d-1(b)(1)(iii), 13d-1(c), 13d-2(b), 13d-3(d)(3), and 13d-5(b)(2)(i).

F. Effects of Proposed Amendments to Regulation 13D-G

Issue	Current schedule 13D	Proposed schedule 13D	Current schedule 13G	Proposed schedule 13G
Person filing.....	Any person acquiring more than five percent of an equity security. Rule 13d-1(a).	No change.....	<i>Institutional Investors</i> —Acquiring more than 5% of an equity security. Rule 13d-1(b). <i>Exempt Acquisitions</i> —Persons holding more than 5% of an equity security whose acquisitions are exempt from Section 13(d). Rule 13d-1(c).	<i>Institutional Investors</i> —No change, except that Schedule may not be used to report holdings of 20% or more. <i>Non-Institutional Investors</i> —Any person holding more than 5%, but not 20% or more, of an equity security with a passive investment purpose may file. Proposed Rules 13d-1(b)(2) and 13d-1(b)(4). <i>Exempt Acquisitions</i> —No change.
Initial filing.....	Within 10 days after the acquisition. Rule 13d-1(a).	No change.....	45 days after end of the calendar year in which the person becomes obligated to file. Rule 13d-1 (b) and (c).	<i>Institutional Investors</i> —No change. <i>Non-Institutional Investors and Exempt Acquisitions</i> —Within 10 days after the acquisition. Proposed Rule 13d-1(b)(2) and (c).
Purpose of acquisition.....	Disclose under Item 4—Purpose of the transaction.	No change.....	<i>Institutional Investors</i> —Requires certification that the securities were acquired in the ordinary course of business, were not acquired for the purpose of and do not have the effect of changing or influencing control of the issuer, and were not acquired in a transaction having such an effect. Schedule 13G, Item 10. Rule 13d-1(b). <i>Exempt Acquisitions</i> —No certification required.	<i>Institutional Investors</i> —Same certification. <i>Non-Institutional Investors</i> —Same certification as institutional investors except that acquisitions need not occur in ordinary course of business ("passive investment purpose"). Schedule 13G, Item 10. Proposed Rule 13d-1(b)(2). <i>Exempt Acquisitions</i> —No change.
Amendment.....	An amendment must be filed promptly to reflect any material change, including a change in investment intent. Rule 13d-2(a).	No change.....	<i>All filers</i> —45 days after the end of the calendar year to report any change in the information. Rule 13d-2(b). <i>Institutional Investors only</i> —Within 10 days after the end of the first month in which such person's ownership exceeds 10 percent of a class of equity securities, and thereafter within 10 days of the end of any month in which such person's beneficial ownership increases or decreases more than 5%, computed as of the end of the month. Rule 13d-1(b)(2).	<i>Institutional Investors</i> —No change. <i>Non-Institutional Investors</i> —Same as requirement for institutional investors. <i>Exempt Acquisitions</i> —No change.
Initial schedule 13D following filing on schedule 13G.	<i>Institutional Investors</i> —Promptly, but no later than 10 days after it ceases to be an eligible institution or determines that it no longer holds such securities in the ordinary course of business or with passive investment purpose. Rule 13d-1(b)(3). <i>Exempt Acquisitions</i> —Not subject to this requirement.	<i>Institutional and Non-Institutional Investors</i> —Schedule 13D would be required within 10 days if: (1) Any person's beneficial ownership of a class of security equals or exceeds 20 percent. Proposed Rule 13d-1(b)(4)(i) or Any person determines that it no longer has a passive investment purpose. Proposed 13d-1(b)(4)(ii). <i>Exempt Acquisitions</i> —No change.		

Issue	Current schedule 13D	Proposed schedule 13D	Current schedule 13G	Proposed schedule 13G
Cooling-off period.....	<p><i>Institutional Investors</i>—Not required except for the 10-day period after initial 13D following change of intent by an Institutional investor reporting on Schedule 13F.</p> <p><i>Exempt Acquisitions</i>—Not subject to this requirement.</p>	<p><i>Institutional and Non-Institutional Investors</i>—From the time beneficial ownership equals or exceeds 20 percent of the class until the date of the required filing. Proposed Rule 13d-1(b)(4)(ii).</p> <p>From the time the person changes its investment purpose until the expiration of ten days from the date of filing. Proposed Rule 13d-1(b)(4)(ii).</p> <p><i>Exempt Acquisitions</i>—No change.</p>	Not applicable.....	Not applicable.

IV. Cost-Benefit Analysis

To evaluate the benefits and costs associated with the proposed amendments to Exchange Act Rules 13d-1, 13d-2, and 13d-7, Schedule 13D, and Schedule 13G, the Commission requests commentators to provide views and data as to the costs and benefits associated with amending the filing requirements for beneficial ownership statements. The ability to file a Schedule 13G instead of a Schedule 13D in specified circumstances should reduce costs for persons meeting the requirements. Persons currently eligible to use a Schedule 13G based on holdings of subject securities at the end of the calendar year may incur increased reporting and monitoring costs because acquisitions that cause a person to hold 20 percent or more of the subject securities would be reported on Schedule 13D.

V. Initial Regulatory Flexibility Analysis

The Initial Regulatory Flexibility Analysis concerns the proposed amendments to the Commission's beneficial ownership rules and related Schedules 13D and 13G. The analysis has been prepared by the Commission in accordance with 5 U.S.C. 604.

The analysis notes that the principal effect of the revisions will be to reduce the filing obligations and associated costs to a majority of persons required to report beneficial ownership under sections 13(d) and 13(g) of the Exchange Act. Although specified categories of investors may incur an increased reporting or monitoring obligation, the Commission does not believe that there will be a significant economic impact on a substantial number of small entities.

A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Richard E. Baltz in the Office of Tender Offers, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

VI. Request for Comments

Any interested persons wishing to submit written comments on the proposals, to suggest additional changes, or to submit comments on other matters that might have an impact on the proposals, are requested to do so. In addition to the specific inquiries made throughout this release, the Commission solicits comments on the usefulness of the proposed revisions to the Schedule 13D-G reporting scheme to reporting persons, registrants, and the marketplace at large.

The Commission also requests comment on whether the proposed rule, if adopted, would have an adverse effect on competition or would impose a burden on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under section 23(a)(2) of the Exchange Act.⁵⁶

The Commission also encourages the submission of written comments with respect to any aspect of the initial regulatory flexibility analysis. Such written comments will be considered in the preparation of the final regulatory flexibility analysis if the proposed rules are adopted.

Persons wishing to submit written comments should file three copies thereof with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comment letters should refer to File No. S7-8-89. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

⁵⁶ 15 U.S.C. 78w(a)(2).

VII. Statutory Basis and Text of Amendments

The amendments to Rules 13d-1, 13d-2 and 13d-7 and Schedules 13D and 13G are being proposed pursuant to the authority set forth in sections 3(b), 13 and 23 of the Securities Exchange Act of 1934.

List of Subjects in 17 CFR Part 240

Reporting and Recordkeeping requirements, Securities.

VIII. Text of Proposals

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read, in part, as follows:

Authority: Sec. 23, 48 Stat. 901, as amended (15 U.S.C. 78w) * * *

2. By amending § 240.13d-1 by revising paragraphs (a) and (b)(1) introductory text, redesignating paragraphs (b)(2), (b)(3), and (b)(4) as (b)(3), (b)(4), and (b)(5), adding a new paragraph (b)(2), revising newly redesignated (b)(3), (b)(4), and (b)(5) and paragraph (c) as follows:

§ 240.13d-1 Filing of Schedules 13D and 13G.

(a) Any person who, after acquiring directly or indirectly the beneficial ownership of any equity security of a class which is specified in paragraph (d) of this section, is directly or indirectly the beneficial owner of more than five percent of such class shall, within 10 days after such acquisition, send to the issuer of the security at its principal executive office, by registered or certified mail, and to each exchange or automated inter-dealer quotation system where the security is traded or

authorized to be quoted, and file with the Commission, a statement containing the information required by Schedule 13D (§ 240.13d-101). A signed original plus five copies of the statement, including all exhibits, shall be filed with the Commission.

(b)(1) A person who would otherwise be obligated under paragraph (a) of this section to file a statement on Schedule 13D and is not directly or indirectly the beneficial owner of 20 percent or more of such class may, in lieu thereof, file with the Commission, within 45 days after the end of the calendar year in which such person became so obligated, a signed original plus five copies, including all exhibits, of a short form statement on Schedule 13G (§ 240.13d-102) and send one copy each of such schedule to the issuer of the security at its principal executive office, by registered or certified mail, and to each national securities exchange or automated inter-dealer quotation system where the security is traded or authorized to be quoted: *Provided*, That it shall not be necessary to file a Schedule 13G unless the percentage of the class of equity security specified in paragraph (c) of this section beneficially owned as of the end of the calendar year is more than five percent: *And provided further*, That:

(b)(2) A person who would otherwise be obligated under paragraph (a) of this section to file a statement on Schedule 13D, but (i) has not acquired such securities with any purpose, or with the effect of, changing or influencing the control of the issuer, or in connection with or as a participant in any transaction having such purpose or effect, including any transaction subject to Rule 13d-3(b) (§ 240.13d-3(b)); (ii) is not a person specified in paragraph (b)(1) of this section; and (iii) is not directly or indirectly the beneficial owner of 20 percent or more of such class, may, in lieu thereof, file with the Commission, within 10 days after an acquisition described in paragraph (a) of this section, a signed original plus five copies, including all exhibits, of a short form statement on Schedule 13G (§ 240.13d-102) and send one copy each of such schedule to the issuer of the security at its principal executive office, by registered or certified mail, and to each national securities exchange or automated inter-dealer quotation system where the security is traded or authorized to be quoted.

(3) Any person relying on Rules 13d-1(b)(1), 13d-1(b)(2), or 13d-2(b) shall, in addition to filing any statements required thereunder, file a statement on

Schedule 13G, or amendment thereto, within 10 days after the end of the first month in which such person's direct or indirect beneficial ownership exceeds 10 percent of a class of equity securities specified in paragraph (d) of this section, computed as of the last day of the month, and thereafter within 10 days after the end of any month in which such person's beneficial ownership of securities of such class, computed as of the last day of the month, increases or decreases by more than five percent of such class of equity securities. A signed original plus five copies of such statement, including all exhibits, shall be filed with the Commission and one copy each sent, by registered or certified mail, to the issuer of the security at its principal executive office and to each national securities exchange or automated inter-dealer quotation system where the security is traded or authorized to be quoted. Once an amendment has been filed reflecting beneficial ownership of five percent or less of the class of securities, no additional filings are required by this paragraph (b)(3) unless the person thereafter becomes the beneficial owner of more than 10 percent of the class.

(4) Notwithstanding paragraphs (b)(1), (b)(2) and (b)(3) of this section and Rule 13d-2(b) (§ 240.13d-2(b)), a person that has reported that it is the beneficial owner of more than five percent of a class of equity securities in a statement on Schedule 13G pursuant to paragraph (b)(1), (2), or (3) of this section or is required to report such acquisition but has not yet filed the schedule, shall immediately become subject to Rules 13d-1(a) and 13d-2(a) and shall file a statement on Schedule 13D within 10 days if:

(i) Such person's beneficial ownership equals or exceeds 20 percent of a class of equity securities specified in Rule 13d-1(d). From the time such person's beneficial ownership equals or exceeds 20 percent of a class of equity securities specified in Rule 13d-1(d) until the filing of a statement on Schedule 13D pursuant to this paragraph, such person shall not: (1) Vote or direct the voting of the securities described therein; or (2) acquire an additional beneficial ownership interest in any equity securities of the issuer of such securities, nor of any person controlling such issuer; or

(ii) such person (1) determines that it has acquired or hold such securities with a purpose or effect of changing or influencing control of the issuer, or in connection with or as a participant in any transaction having such purpose or effect, including any transaction subject

to Rule 13d-3(b) (§ 240.13d-3(b)); and (2) is at that time the beneficial owner of more than five percent of a class of equity securities described in Rule 13d-1(d). From the time such person determines that it has acquired or holds such securities with a purpose or effect of changing or influencing control of the issuer, or in connection with or as a participant in any transaction having such purpose or effect until the expiration of the tenth day from the date of the filing of a Schedule 13D pursuant to this section, such person shall not: (A) Vote or direct the voting of the securities described therein; or (B) acquire an additional beneficial ownership interest in any equity securities of the issuer of such securities, nor for any person controlling such issuer.

(5) Any person who has reported an acquisition of securities in a statement on Schedule 13G pursuant to paragraph (b)(1) or (b)(3) of this section and thereafter ceases to be a person specified in paragraph (b)(1)(ii) of this section shall immediately become subject to Rules 13d-1 or (b)(2) (if such person satisfies the requirements specified in paragraph (b)(2)) and 13d-2 (a) or (b) and shall file, within 10 days thereafter, a statement on Schedule 13D or amendment to Schedule 13G, as specified, in the event such person is a beneficial owner at that time of more than five percent of the class of equity securities.

(c) Any person who is or becomes directly or indirectly the beneficial owner or more than five percent of any equity security of a class specified in paragraph (d) of this section and who is not required to file a statement under paragraph (a) of this section by virtue of the exemption provided by section 13(d)(6) (A) or (B) of the Act, or because such person otherwise (except for the exemption provided by section 13(d)(6)(C) of the Act) is not required to file such a statement, shall within 10 days after becoming the beneficial owner, send to the issuer of the security at its principal executive office, by registered or certified mail, and file with the Commission a statement containing the information required by Schedule 13G (§ 240.13d-102). A signed original plus five copies of the statement, including all exhibits shall be filed with the Commission.

3. By amending § 240.13d-2 by revising paragraph (a), the second sentence of paragraph (b) and the note following paragraph (b) as follows:

§ 240.13d-2 Filing of amendments to Schedules 13D or 13G.

(a) Schedule 13D—If any material change occurs in the facts set forth in the statement required by Rule 13d-1(a) (§ 240.13d-1(a)), including, but not limited to, any material increase or decrease in the percentage of the class beneficially owned, the person or persons who were required to file such statement shall promptly file or cause to be filed with the Commission and send or cause to be sent to the issuer at its principal executive office, by registered or certified mail, and to each exchange or inter-dealer quotation system on which the security is traded or authorized to be quoted an amendment disclosing such change. An acquisition or disposition of beneficial ownership of securities in an amount equal to one percent or more of the class of securities shall be deemed "material" for purposes of this rule; acquisitions or dispositions of less than such amounts may be material, depending upon the facts and circumstances. A signed original plus five copies of each such amendment shall be filed with the Commission.

(b) * * * A signed original plus five copies of such amendment, including all exhibits, shall be filed with the Commission and one each sent, by registered or certified mail, to the issuer of the security at its principal executive office and (except with respect to persons filing pursuant to 13d-1(c)) to each national securities exchange or inter-dealer quotation system where the security is traded or authorized to be quoted. * * *

Note.—For persons filing a short-form statement pursuant to Rule 13d-1(b) (1) or (2), see also rules 13d-1(b) (3), (4), and (5).

4. By amending § 240.13d-7 by revising the second sentence as follows:

§ 240.13d-7 Fees for Filing Schedules 13D or 13G

* * * No fees shall be required with respect to the filing of any amended Schedule 13D or 13G, and no fees shall be required with respect to an initial Schedule 13D or Schedule 13G if the filing person previously has filed a statement reporting beneficial ownership of more than five percent of such class of equity securities and has not subsequently filed an amendment reporting beneficial ownership of five percent or less of such class; *Provided, however,* That once an amendment has been filed reflecting beneficial ownership of five percent or less of such class, an additional fee of \$100 shall be paid with the next filing of that person

that reflects ownership of more than five percent.

5. By amending § 240.13d-101 by revising the language preceding the first box on the cover page, and revising the note on the cover page as follows:

§ 240.13d-101 Schedule 13D—Information to be included in statements filed pursuant to § 240.13d-1(a) and amendments thereto filed pursuant to § 240.13d-2(a).

If the filing has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of Rule 13d-1(b)(4)(i) (A) or (B), check the following box.

Note.—An original plus five copies of this statement, including all exhibits, should be filed with the Commission. See Rule 13d-1(a) for other parties to whom copies are to be sent.

6. By amending § 240.13d-102 by adding a line for the date of the reportable event following "(CUSIP Number)", revising Instruction A, revising Items 3, 4, and 10, and revising the note at the end of the schedule, as follows:

§ 240.13d-102 Schedule 13G—Information to be included in statements filed pursuant to § 240.13d-1(b) and (c) and amendments thereto filed pursuant to § 240.13d-1(b)(3) or § 240.13d-2(b).

(Date of Event Which Requires Filing of this Statement)

Instructions. A. Statements filed pursuant to Rule 13d-1(b)(1) containing the information required by this schedule shall be filed not later than February 14 following the calendar year in which the person became obligated to report or within the time specified in Rule 13d-1(b)(3), if applicable. Statements filed pursuant to Rule 13d-1(b) or 13d-1(c) shall be filed not later than 10 days after the event requiring the filing.

Item 3. If this statement is filed pursuant to Rule 13d-1(b)(1) or 13d-2(b), check whether the person filing is a:

- (a) ☐ Broker or dealer registered under section 15 of the Act.
- (b) ☐ Bank as defined in section 3(a)(6) of the Act.
- (c) ☐ Insurance company as defined in section 3(a)(19) of the Act.
- (d) ☐ Investment company registered under section 8 of the Investment Company Act.
- (e) ☐ Investment adviser registered under section 203 of the Investment Advisers Act of 1940.
- (f) ☐ Employee benefit plan, pension fund

which is subject to the provisions of the Employee Retirement Income Security Act of 1974 or endowment fund; see § 240.13d-1(b)(1)(ii)(F).

(g) ☐ Parent holding company, in accordance with § 240.13d-1(b)(ii)(G).

In this statement is filed pursuant to Rule 13d-1(b)(2), check this box. _____

Item 4. Ownership.

Provide the following information regarding the aggregate number and percentage of the class of securities of the issuer identified in Item 1.

- (a) Amount beneficially owned: _____
- (b) Percent of class: _____
- (c) Number of shares as to which such person has: _____
- (f) Sole power to vote or to direct the vote

(ii) Shared person to vote or to direct the vote _____

(iii) Sole power to dispose or to direct the disposition of _____

(iv) Shared power to dispose or to direct the disposition of _____

Instruction. For computations regarding securities which represent a right to acquire an underlying security see Rule 13d-3(d)(1).

Item 10. Certification.

(a) The following certification shall be included if the statement is filed pursuant to Rule 13d-1(b)(1): By signing below I certify that, to the best of my knowledge and belief, the securities referred to above were acquired in the ordinary course of business and were not acquired for the purpose of and do not have the effect of changing or influencing the control of the issuer of such securities and were not acquired in connection with or as a participant in any transaction having such purpose or effect.

(b) The following certification shall be included if the statement is filed pursuant to Rule 13d-1(b)(2):

By signing below I certify that, to the best of my knowledge and belief, the securities referred to above were not acquired for the purpose of and do not have the effect of changing or influencing the control of the issuer of such securities and were not acquired in connection with or as a participant in any transaction having such purpose or effect.

Note.—A signed original plus five copies of this statement, including all exhibits, should be filed with the Commission.

By the Commission.

Jonathan G. Katz,
Secretary.

March 6, 1989.

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